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Attorneys for Plaintiff  
Emerose Agatep

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Emerose Agatep,

Plaintiff,

v.

Bank of America, N.A., and DOES 1  
through 100 inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Emerose Agatep, an individual, based on information and belief, to allege as follows:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47

1 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing  
2 equipment when making calls to consumers.

3 2. Plaintiff brings this action against Defendant Bank of America, National Association  
4 (hereinafter “Defendant” or “Bank of America”) for its abusive and outrageous conduct in  
5 connection with debt collection activity.

6 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following  
7 findings and purpose in creating the Rosenthal Act:

8 (a)(1) The banking and credit system and grantors of credit to consumers are dependent  
9 upon the collection of just and owing debts. Unfair or deceptive collection practices  
10 undermine the public confidence which is essential to the continued functioning of the  
11 banking and credit system and sound extensions of credit to consumers.

12 (2) There is need to ensure that debt collectors and debtors exercise their  
13 responsibilities to another with fairness and honesty and due regard or the rights of the  
14 other.

15 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or  
16 deceptive acts of practices in the collection of consumer debts and to require debtors to  
17 act fairly in entering into and honoring such debts, as specified in this title.

18 4. While many violations are described below with specificity, this Complaint alleges  
19 violations of the statutes cited in their entirety.

20 5. The TCPA was designed to prevent calls like the ones described herein, and to protect  
21 the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give  
22 consumers a choice as to how corporate entities may contact them and to prevent the nuisance  
23 associated with automated or prerecorded calls.

#### 24 **JURISDICTION & VENUE**

25 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §  
26 227.

27 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

#### 28 **GENERAL ALLEGATIONS**

8. Plaintiff Emerose Agatep (hereinafter “Plaintiff”) is an individual residing in the state  
of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

1       9. At all relevant times herein, Bank of America was a company engaged, by the use of  
2 mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer  
3 debt,” as defined by Cal. Civ. Code §1788.2(f).

4       10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.  
5 Civ. Code §1788.2(c)

6       11. Plaintiff had taken out an unsecured loan with Defendant on or about April of 2002.

7       12. The loan Plaintiff took from Defendant was extended primarily for personal, family or  
8 household purposes and is therefore a “debt” as that term is defined by the Calif. Civil Code §  
9 1788.2(d) of the Rosenthal Act.

10       13. Defendant has been attempting to collect on a debt that originated from monetary  
11 credit that was extended primarily for personal, family, or household purposes, and was  
12 therefore a “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3)  
13 of the Rosenthal Act.

14       14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant  
15 rising from what Plaintiff is informed and believes was a consumer credit transaction, the  
16 money allegedly owed was a “consumer debt” within the meaning of California Civil Code §  
17 1788.2(f) of the Rosenthal Act.

18       15. Plaintiff is informed and believes that Defendant is one who regularly collects or  
19 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the  
20 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in  
21 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal  
22 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)  
23 of the Rosenthal Act.

24       16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the  
25 account.

26       17. Plaintiff began making payments on the loan before she became financially unable to  
27 keep up with the monthly payments.  
28

1 18. Defendant began contacting Plaintiff in January of 2017 to inquire about the status of  
2 the loan and to collect on the payments that were no longer being made.

3 19. Plaintiff retained counsel to assist in dealing with Defendant's debt and to seek some  
4 type of financial relief.

5 20. Counsel for Plaintiff sent Defendant a letter confirming representation of Plaintiff and  
6 that Plaintiff was revoking her consent to be contacted on her cellular telephone.

7 21. Defendant was also informed to no longer contact Plaintiff directly and that all  
8 calls/letters/collection efforts were to no longer be directed at Plaintiff.

9 22. Counsel for Plaintiff sent the letter of representation to Defendant on or about January  
10 6, 2017.

11 23. Defendant was also informed that Plaintiff was revoking her consent to be called on  
12 her telephone in January of 2017.

13 24. Defendant continued to contact Plaintiff between approximately January 2017 – June  
14 of 2017; the type of contact was through nearly daily phone calls to Plaintiff.

15 25. Defendant would sometimes call Plaintiff one – two times each day demanding  
16 payment on the account.

17 26. Defendant would use an automatic dialing machine when placing the calls to Plaintiff.

18 27. Plaintiff was contacted constantly regarding non-payment of the debt owed to  
19 Defendant despite Defendant being notified that Plaintiff had retained counsel to deal  
20 specifically with the debt owed to Defendant.

21 28. Bank of America, N.A. was sent a second notice regarding revocation of any prior  
22 consent that may have been given and reminding Bank of America, N.A. that Plaintiff retained  
23 counsel to address the Bank of America debt and that calls were not to be made to Plaintiff.

24 29. Despite the second notice being sent to Bank of America the calls to Plaintiff  
25 continued.

26 30. Defendant's calls were frequent in nature and continued despite receiving written  
27 confirmation that Plaintiff was represented by an attorney.

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**FIRST CAUSE OF ACTION**

(Violation of the Rosenthal Act)  
(Cal. Civ. Code §§ 1788-1788.32)  
(Against Defendants and Does 1-100)

31. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

32. Plaintiff provided written notice on two separate occasions that she was represented by sending Defendant a letter with the name, address, and contact information of her attorney and informed Defendant that she was represented.

33. Defendant continued to call and attempt to make contact with Plaintiff despite receiving notice of representation and being informed that Plaintiff had retained counsel in an effort to deal with the debt that was owed to Defendant.

34. The calls and communications made by Defendant to Plaintiff were not related to statements of Plaintiff's account and were attempts to collect a debt.

35. Plaintiff received daily calls from Defendant from at least January 2017 – June 2017.

36. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving noticed that Plaintiff had retained an attorney.

**SECOND CAUSE OF ACTION**

(Violation of the TCPA)  
(47 USC § 227)  
(Against Defendants and Does 1-100)

37. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

38. Since at least about January of 2017 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

39. Defendant was informed in January of 2017 that Plaintiff was revoking consent to be contacted by Defendant on her cellular telephone.

40. Defendant called Plaintiff at least daily since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

41. Defendant would contact Plaintiff daily regarding payment on the accounts.

1 42. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver  
2 the collection messages without Plaintiff's prior express consent.

3 43. Plaintiff, if consent had previously been given to be contacted on her cellular telephone,  
4 revoked her consent on at least two separate occasions.

5 44. Defendant continued calling Plaintiff despite two separate notices being sent to  
6 Defendant.

7 45. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing  
8 system" as defined by 47 U.S.C. §227(a)(1).

9 46. These calls were made to Plaintiff's cellular telephone and were not calls for an  
10 emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

11 47. Plaintiff expressly revoked any consent that may have previously been given to  
12 Defendant to be contacted by an automatic dialing machine in January of 2017.

13 48. Plaintiff was contacted at least 73 (seventy three) times by Defendant.

14 49. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment as follows:

- 17 **a.** An award of actual damages pursuant to California Civil Code §1788.30(a), as  
18 will be proven at trial, which are cumulative and in addition to all other  
19 remedies provided for in any other cause of action pursuant to California Civil  
20 Code §1788.32.
- 21 **b.** An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code  
22 §1788.30(b), which are cumulative and in addition to all other remedies  
23 provided for in California Civil Code §1788.32; and
- 24 **c.** An award of costs of litigation and reasonable attorney's fees pursuant to Cal.  
25 Civ. Code §1788.30(c).
- 26 **d.** An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C.  
27 §227(b)(3)(C) for each and every violation.

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1 e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct  
2 in the future.

3 Dated: August 24, 2017

By: **SAGARIA LAW, P.C.**  
4 /s/ Scott Johnson  
5 Scott Sagaria, Esq.  
6 Scott Johnson, Esq.  
7 Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial of this matter by jury.

10 Dated: August 24, 2017

11 **SAGARIA LAW, P.C.**  
12 /s/ Scott Johnson  
13 Scott Sagaria, Esq.  
14 Scott Johnson, Esq.  
15 Attorneys for Plaintiff  
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